

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 1202**  
**91ST GENERAL ASSEMBLY**

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Reported from the Committee on Transportation, April 15, 2002, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 1202 Do Pass by Consent.

TED WEDEL, Chief Clerk

4670L.13C

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**AN ACT**

To repeal sections 389.005, 389.610, and 621.015, RSMo, and to enact in lieu thereof six new sections relating to the directives of executive order number 02-03, signed by the governor February 7, 2002, with an emergency clause.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 389.005, 389.610 and 621.015, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 104.805, 308.010, 389.005, 389.610, 621.015 and 621.040, to read as follows:

**104.805. 1. Employees who are earning creditable service in the closed plan of the Missouri state employees' retirement system and who are, as a result of the provisions of this act, transferred to the department of transportation will not become members of the closed plan of the highways and transportation employees' and highway patrol retirement system unless they elect to transfer membership and creditable service to the closed plan of the highways and transportation employees' and highway patrol retirement system. The election must be in writing and must be made within ninety days of the effective date of this act. Any election to transfer membership and creditable service to the highways and transportation employees' and highway patrol retirement system will result in the forfeiture of any rights or benefits in the Missouri state employees' retirement system. Any failure to elect to transfer membership and creditable service pursuant to this subsection will result in the employees remaining in the closed plan of the Missouri state employees'**

**EXPLANATION —** Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 retirement system. If an election is made, the effective date for commencement of  
14 membership and transfer of such creditable service shall be January 1, 2003.

15       2. Employees who are earning credited service in the year 2000 plan of the Missouri  
16 state employees' retirement system and who are, as a result of the provisions of this act,  
17 transferred to the department of transportation will remain in the year 2000 plan  
18 administered by MOSERS unless they elect to transfer membership and credited service  
19 to the year 2000 plan administered by the highways and transportation employees' and  
20 highway patrol retirement system. The election must be in writing and must be made  
21 within ninety days of the effective date of this act. Any election to transfer membership  
22 and credited service to the year 2000 plan administered by the highways and  
23 transportation employees' and highway patrol retirement system will result in the  
24 forfeiture of any rights or benefits in the Missouri state employees' retirement system. Any  
25 failure to elect to transfer membership and credited service pursuant to this subsection will  
26 result in the employees remaining in the year 2000 plan administered by the Missouri state  
27 employees' retirement system. If an election is made, the effective date for commencement  
28 of membership and transfer of such creditable service shall be January 1, 2003.

29       3. For any employee who elects under subsection 1 or 2 of this section to transfer  
30 to the highways and transportation employees' and highway patrol retirement system, the  
31 Missouri state employees' retirement system shall pay to the highways and transportation  
32 employees' and highway patrol retirement system, by December 31, 2002, an amount  
33 actuarially determined to equal the liability transferred from the Missouri state employees'  
34 retirement system.

35       4. In no event shall any employee receive service credit for the same period of  
36 service under more than one retirement system as a result of the provisions of this section.

37       5. For any transferred employee who elects under subsection 1 or 2 of this section  
38 to transfer to the highways and transportation employee's and highway patrol retirement  
39 system, the only medical coverage available for the employee shall be the medical coverage  
40 provided in section 104.270, RSMo. The effective date for commencement of membership  
41 and transfer of such creditable service shall be January 1, 2003. However, this does not  
42 preclude medical coverage for the transferred employee as a dependent under any other  
43 health care plan.

308.010. 1. The highways and transportation commission shall have responsibility  
2 and authority, as provided in this act, for the administration and enforcement of:

3       (1) Licensing, supervising and regulating motor carriers for the transportation of  
4 passengers, household goods and other property by motor vehicles within this state;

5       (2) Licensing motor carriers to transport hazardous waste, used oil, infectious

6 waste and permitting waste tire haulers in intrastate or interstate commerce, or both, by  
7 motor vehicles within this state;

8 (3) Compliance by motor carriers and motor private carriers with applicable  
9 requirements relating to safety and hazardous materials transportation, within the  
10 terminals of motor carriers and motor private carriers of passengers or property;

11 (4) Compliance by motor carriers and motor private carriers with applicable  
12 requirements relating to safety and hazardous materials transportation wherever they  
13 possess, transport or deliver hazardous waste, used oil, infectious waste or waste tires. This  
14 authority is in addition to, and not exclusive of, the authority of the department of natural  
15 resources to ensure compliance with any and all applicable requirements related to the  
16 transportation of hazardous waste, used oil, infectious waste or waste tires;

17 (5) Collecting and regulating amounts payable to the state from interstate motor  
18 carriers in accordance with the provisions of the International Fuel Tax Agreement in  
19 accordance with section 142.617, RSMo, and any successor or similar agreements,  
20 including the authority to impose and collect motor fuel taxes due pursuant to chapter 142,  
21 RSMo, and such agreement;

22 (6) Registering and regulating interstate commercial motor vehicles operated upon  
23 the highways of this state, in accordance with the provisions of the International  
24 Registration Plan in accordance with sections 301.271 through 301.277, RSMo, and any  
25 successor or similar agreements, including the authority to issue license plates in  
26 accordance with sections 301.130 and 301.041, RSMo;

27 (7) Permitting the transportation of over dimension or overweight motor vehicles  
28 or loads that exceed the maximum weights or dimensions otherwise allowed upon the  
29 public highways within the jurisdiction of the highways and transportation commission;  
30 and

31 (8) Licensing intrastate house movers.

32 2. The highways and transportation commission shall carry out all powers, duties  
33 and functions relating to intrastate and interstate transportation previously performed by:

34 (1) The division of motor carrier and railroad safety within the department of  
35 economic development, and all officers or employees of that division;

36 (2) The department of natural resources, and all officers or employees of that  
37 division, relating to the issuance of licenses or permits to transport hazardous waste, used  
38 oil, infectious waste or waste tires by motor vehicles operating within the state;

39 (3) The highway reciprocity commission within the department of revenue, and all  
40 officers or employees of that commission; and the director of revenue's powers, duties and  
41 functions relating to the highway reciprocity commission, except that the highways and

transportation commission may allow the department of revenue to enforce the provisions of the International Fuel Tax Agreement, as required by such agreement; and

(4) The motor carrier services unit within the traffic functional unit of the department of transportation, relating to the special permitting of operations on state highways of motor vehicles or loads that exceed the maximum length, width, height or weight limits established by law or by the highways and transportation commission.

3. All the powers, duties and functions described in subsections 1 and 2 of this section, including but not limited to, all powers, duties and functions pursuant to chapters 387, 390 and 622, RSMo, including all rules and orders, are hereby transferred to the department of transportation, which is in the charge of the highways and transportation commission, by type I transfer, as defined in the Omnibus State Reorganization Act of 1974, and the preceding agencies and officers shall no longer be responsible for those powers, duties and functions.

4. All the powers, duties and functions, including all rules and orders, of the administrative law judges of the division of motor carrier and railroad safety, as amended by the provisions of this act, are hereby transferred to the administrative hearing commission within the state office of administration.

5. The division of motor carrier and railroad safety and the highway reciprocity commission are abolished.

6. Personnel previously employed by the division of motor carrier and railroad safety and the highway reciprocity commission shall be transferred to the department of transportation, but the department of natural resources shall not be required to transfer any personnel pursuant to this section. The administrative law judge within the division of motor carrier and railroad safety shall be transferred to the department of transportation.

7. Credentials issued by the transferring agencies or officials before the effective date of this act shall remain in force or expire as provided by law. In addition, the highways and transportation commission shall have the authority to suspend, cancel or revoke such credentials after the effective date of this act.

8. Notwithstanding any provision of law to the contrary, on and after the effective date of this section all surety bonds, cash bonds, certificates of deposit, letters of credit, drafts, checks or other financial instruments payable to:

(1) The highway reciprocity commission or the department of revenue pursuant to section 301.041, RSMo, or pursuant to the International Fuel Tax Agreement; or

(2) Any other agency or official whose powers, duties or functions are transferred pursuant to this section, shall be payable instead to the state highways and transportation

78 **commission.**

79 **9. The department of natural resources shall have authority to collect and establish**  
80 **by rule the amount of the fee paid by applicants for a permit to transport waste tires.**

81 **10. The Missouri hazardous waste management commission created in section**  
82 **260.365, RSMo, shall have the authority to collect and establish by rule the amount of the**  
83 **fee paid by applicants for a license to transport hazardous waste, used oil, or infectious**  
84 **waste pursuant to section 260.395, RSMo.**

389.005. [The term "division", as used in this chapter, means the division of motor  
2 carrier and railroad safety within the department of economic development, unless such use is  
3 clearly contrary to the context.] **Except as otherwise provided in this act, all the powers,**  
4 **duties and functions of the division of motor carrier and railroad safety relating to rail**  
5 **transportation activities, including all rules and orders, as provided in this chapter and**  
6 **chapters 388, 391 and 622, RSMo, are hereby transferred to the department of**  
7 **transportation, which is in the charge of the highways and transportation commission, by**  
8 **type I transfer as set forth in the Omnibus State Reorganization Act of 1974. Except as**  
9 **otherwise provided, all personnel of the division of motor carrier and railroad safety are**  
10 **transferred to the department of transportation by section 308.010, RSMo.**

389.610. 1. No public road, highway or street shall be constructed across the track of  
2 any railroad corporation, nor shall the track of any railroad corporation be constructed across a  
3 public road, highway or street, nor shall the track of any railroad corporation be constructed  
4 across the track of any other railroad or street railroad corporation at grade nor shall the track of  
5 a street railroad corporation be constructed across the tracks of a railroad corporation at grade,  
6 without having first secured the permission of the [division of motor carrier and railroad safety]  
7 **highways and transportation commission**, except that this subsection shall not apply to the  
8 replacement of lawfully existing tracks. The [division] **commission** shall have the right to refuse  
9 its permission or to grant it upon such terms and conditions as it may prescribe.

10 2. Every railroad corporation shall construct and maintain good and sufficient crossings  
11 and crosswalks where its railroad crosses public roads, highways, streets or sidewalks now or  
12 hereafter to be opened.

13 3. The [division of motor carrier and railroad safety] **highways and transportation**  
14 **commission** shall make and enforce reasonable rules and regulations pertaining to the  
15 construction and maintenance of all public grade crossings. These rules and regulations shall  
16 establish minimum standards for:

- 17 (1) The materials to be used in the crossing surface;  
18 (2) The length and width of the crossing;  
19 (3) The approach grades;

20 (4) The party or parties responsible for maintenance of the approaches and the crossing  
21 surfaces.

22 4. The [division] **highways and transportation commission** shall have the exclusive  
23 power to determine and prescribe the manner, including the particular point of crossing, and the  
24 terms of installation, operation, maintenance, apportionment of expenses, use and warning  
25 devices of each crossing of a public road, street or highway by a railroad or street railroad, and  
26 of one railroad or street railroad by another railroad or street railroad. In order to facilitate such  
27 determinations, the [division] **highways and transportation commission** may adopt pertinent  
28 provisions of The Manual on Uniform Traffic Control Devices for Streets and Highways or other  
29 national standards.

30 5. The [division] **highways and transportation commission** shall have the exclusive  
31 power to alter or abolish any crossing, at grade or otherwise, of a railroad or street railroad by  
32 a public road, highway or street whenever the [division] **highways and transportation**  
33 **commission** finds that public necessity will not be adversely affected and public safety will be  
34 promoted by so altering or abolishing such crossing, and to require, where, in its judgment it  
35 would be practicable, a separation of grades at any crossing heretofore or hereafter established,  
36 and to prescribe the terms upon which such separation shall be made.

37 6. The [division] **highways and transportation commission** shall have the exclusive  
38 power to prescribe the proportion in which the expense of the construction, installation,  
39 alteration or abolition of such crossings, the separation of grades, and the continued maintenance  
40 thereof, shall be divided between the railroad, street railroad, and the state, county, municipality  
41 or other public authority in interest.

42 7. Any agreement entered into after October 13, 1963, between a railroad or street  
43 railroad and the state, county, municipality or other public authority in interest, as to the  
44 apportionment of any cost mentioned in this section shall be final and binding upon the filing  
45 with the [division] **highways and transportation commission** of an executed copy of such  
46 agreement. If such parties are unable to agree upon the apportionment of the cost, the [division]  
47 **highways and transportation commission** shall apportion the cost among the parties according  
48 to the benefits accruing to each. In determining such benefits, the [division] **highways and**  
49 **transportation commission** shall consider all relevant factors including volume, speed and type  
50 of vehicular traffic, volume, speed and type of train traffic, and advantages to the public and to  
51 such railroad or street railroad resulting from the elimination of delays and the reduction of  
52 hazard at the crossing.

53 8. Upon application of any person, firm or corporation, the [division] **highways and**  
54 **transportation commission** shall determine if an existing private crossing has become or a  
55 proposed private crossing will become utilized by the public to the extent that it is necessary to

56 protect or promote the public safety. The [division] **highways and transportation commission**  
57 shall consider all relevant factors including but not limited to volume, speed, and type of  
58 vehicular traffic, and volume, speed, and type of train traffic. If it be determined that it is  
59 necessary to protect and promote the public safety, the [division] **highways and transportation**  
60 **commission** shall prescribe the nature and type of crossing protection or warning device for such  
61 crossing, the cost of which shall be apportioned by the [division] **highways and transportation**  
62 **commission** among the parties according to the benefits accruing to each. In the event such  
63 crossing protection or warning device as prescribed by the [division] **highways and**  
64 **transportation commission** is not installed, maintained or operated, the crossing shall be closed  
65 to the public.

66 **9. The exclusive power of the highways and transportation commission pursuant**  
67 **to this section shall be subject to review, determination, and prescription by the**  
68 **administrative hearing commission, upon application to that commission by any interested**  
69 **party. Upon filing of an application pursuant to this subsection, the administrative hearing**  
70 **commission is vested with the exclusive power of the highways and transportation**  
71 **commission otherwise provided in this section, with reference to matters reviewed,**  
72 **determined or prescribed by the administrative hearing commission.**

621.015. The "Administrative Hearing Commission" is assigned to the office of  
2 administration. It shall consist of no more than three commissioners. The commissioners shall  
3 be appointed by the governor with the advice and consent of the senate. The term of each  
4 commissioner shall be for six years, **beginning on the date of appointment, and continuing**  
5 until [his] **that commissioner's** successor is appointed, qualified and sworn. The commissioners  
6 shall be attorneys at law admitted to practice before the supreme court of Missouri, but shall not  
7 practice law during their term of office. Each commissioner shall receive annual compensation  
8 of fifty-one thousand dollars plus any salary adjustment provided pursuant to section 105.005,  
9 RSMo. Each commissioner shall also be entitled to actual and necessary expenses in the  
10 performance of his duties. The office of the administrative hearing commission shall be located  
11 in the City of Jefferson and it may employ necessary clerical assistance, compensation and  
12 expenses of the commissioners to be paid from appropriations from general revenue made for  
13 that purpose.

**621.040. 1. The administrative hearing commission shall have jurisdiction to**  
2 **conduct hearings, make findings of fact and conclusions of law, and issue orders in all**  
3 **applicable cases relating to motor carrier and railroad regulation transferred to the**  
4 **highways and transportation commission pursuant to this act, except that, notwithstanding**  
5 **any provision of law to the contrary, the highways and transportation commission may**  
6 **issue final agency orders without involvement of the administrative hearing commission**

7 **in relation to:**

8 **(1) Uncontested motor carrier cases, and other uncontested motor carrier matters,**  
9 **or in which all parties have waived a hearing in writing; and**

10 **(2) Approval of settlement agreements or issuance of consent orders in motor**  
11 **carrier or railroad enforcement cases, if all parties have consented in writing to the**  
12 **issuance of the commission's order.**

Section B. Because of the need to ensure safe and efficient administration of commercial  
2 motor vehicles within this state, this act is deemed necessary for the immediate preservation of  
3 the public health, welfare, peace and safety, and is hereby declared to be an emergency act within  
4 the meaning of the constitution, and this act shall be in full force and effect upon its passage and  
5 approval, or July 1, 2002, whichever later occurs.